IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL Nos.5206 to 5221 of 2006

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPECIAL LAQ OFFICER & 1 - Appellant(s)
Versus
KANTILAL JOITARAM PATEL & ANR – Respondent(s)

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Appearance :
Mr.S.S.Shah, GP, for Appellants (In FA 5206/06 to 5214/06)
Ms.Krina P.Calla, AGP, for Appellants (In FA 5215/06 to 5221/06)
MR AJ PATEL for claimant/claimants (In all FAs)

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

Date : 21/12/2006

COMMON ORAL JUDGMENT (Per: HON'BLE MR.JUSTICE J.M.PANCHAL)

1. Admitted. Mr.A.J.Patel, learned counsel, waives service of notice on behalf of the claimant/claimants in each appeal. Having regard to the facts of the case, the appeals are taken up for final disposal today.

2. These appeals filed under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, are directed against common judgment and award dated October 29,2005, rendered by the learned 4th Additional Senior Civil Judge, Ahmedabad (R) at Navrangpura in Land Acquisition Case Nos.130 to 145 of 2002 by which the claimants have been awarded additional amount of compensation at the rate of Rs.123/-per sq.mt, for their acquired lands, over and above the compensation offered to them by the Special Land Acquisition Officer at the rate of Rs.6.60 Ps. per sq.mt. by his award dated September 1, 2000.

3. The Executive Engineer, Narmada Yojana, Division No.7, Gandhinagar proposed to the State Government to acquire the lands of village Nidhrad, Taluka Sanand, District Ahmedabad for the public purpose of construction of canal under Narmada Project. On perusal of the said proposal, the State Government was satisfied that the lands of village Nidhrad were likely to be needed for the said public purpose. Therefore, a Notification under Section 4 of the Act was issued, which was published in the Official Gazette on October 21, 1999. Thereafter, the land owners were served with notices under Section 4(1) of the Act. On receipt of the notices, the land owners opposed to the proposed acquisition. After considering their objections, a report, as contemplated by Section 5A(2) of the Act, was forwarded by the Special Land Acquisition Officer to the State Government. On scrutiny of the said report, the State Government was satisfied that the lands of village Nidhrad, which were specified in the notification published under Section 4 of the Act, were needed for the public purpose of construction of canal under Narmada Project. Therefore, a

declaration under Section 6 of the Act was made which was also published in the Official Gazette on February 25, 2000. The interested persons were thereafter served with the notices under Section 9 of the Act for determination of the compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.200/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer offered compensation to the claimants at the rate of Rs.6.60 Ps. per sq.mt. by his award dated September 1, 2000. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, references were made to the District Court, Ahmedabad (R), which were registered as Land Acquisition Reference Nos.130 to 145 of 2002.

4. On behalf of the claimants, witness Muljibhai Revabhai Solanki was examined at Exh.37. He mentioned before the Court that the lands acquired were highly fertile and that each claimant was able to raise different crops during three different seasons in a year. The witness for the claimants asserted that each claimant was able to earn net income of Rs.45,000/- to Rs.50,000/- per year per Vigha from the sale of agricultural produces such as cumin seeds, cotton, Juwar, Millet, wheat etc. The witness mentioned that village Nidhrad was fully developed and was situated quite near Sanand town. The witness produced previous award of the Reference Court relating to the lands of this very village at Exh.31 and claimed that the lands, which were acquired previously from this very village, were similar in all respects to the lands acquired in the instant case. According to this witness, the claimants were entitled to additional amount of compensation on the basis of previous award of the Reference Court relating to the lands of this very village. The witness further produced copy of judgment of the Reference Court relating to the lands of village

Godhavi at Exh.32 and claimed that the claimants should also be awarded additional compensation on the basis of the award of the Reference Court relating to the lands of village Godhavi. It was mentioned by the witness that the previous award of the Reference Court relating to the lands of village Godhavi, which were similar in all respects to the lands acquired in the instant case, was challenged before the High Court and the High Court had partly allowed the same by reducing the amount of compensation payable to the claimants in those cases at the rate of Rs.85/- per sq.mt. What was further mentioned by the said witness before the Reference Court was that the judgment of the High Court relating to the lands of village Godhavi was confirmed by the Supreme Court.

5. Though this witness was cross examined at length on behalf of the appellants, nothing substantial could be elicited, nor the assertion made by this witness that the lands acquired previously from this village were similar in all respects to the lands acquired in the instant case could be demonstrated to be untrue.

6. On behalf of the appellants, witness Vijaysinh Dharmendrasinh Vaghela, who was then discharging duties as Additional Executive Engineer, was examined at Exh.39. This witness mentioned before the court that the Special Land Acquisition officer had taken into consideration relevant factors before offering compensation to the claimants and, therefore, the claimants were not entitled to enhanced compensation. In cross examination the witness had to admit that on the lands of village Nidhrad same crops were being raised.

7. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that the previous award of the Reference Court relating the lands of village Nidhrad was a relevant piece of evidence and furnished good guidance for the purpose of determining the market value of the lands acquired in the instant case. The Reference Court noticed that in the previous case Notification under section 4(1) of the Act was published in the Official Gazette on December 20, 1984 whereas in the instant case it

was published in the Official Gazette on October 21, 1999 and in view of time gap between the two Notifications, the claimants were entitled to the benefit of reasonable rise in price of the lands at the rate of 10% per annum. In the ultimate analysis the Reference Court has come to the conclusion that the claimants would be entitled to additional amount of compensation at the rate of Rs.123/- per sq.mt. by impugned judgment, giving rise to these appeals.

8. This Court has heard Mr.S.S.Shah, learned Government Pleader for the appellants and Mr.A.J.Patel, learned counsel for the claimants at length and in great detail. This Court has also considered the documents produced by the learned counsels for the parties for perusal of the Court.

9. Though the witness for the claimants could not make good his assertion that each claimant was earning net income of Rs.45,000/- to Rs.50,000/- per year per Vigha from the sale of agricultural produces, there is no manner of doubt that the lands acquired were highly fertile and that different crops

were being raised thereon. However, it is to be noticed that the claimants never claimed enhanced compensation either on the basis of yield or on the basis of comparable sale instances. What was relied upon by the claimants was previous award of the Reference Court relating to the lands of this very village, which was produced at Exh.31. A perusal of Exh.31 makes it very clear that the lands of village Nidhrad were acquired for the public purpose of Ghuma-Godhavi-Nidhrad road pursuant to publication of Notification issued under Section 4(1) of the Act in the Official Gazette on December 20,1984. Therein, the Special Land Acquisition Officer had awarded compensation to the claimants at the rate of Rs.1.25 Ps. per sq.mt. for irrigated land and Rs.1/- per sq.mt. for non-irrigated land by his award dated October 17,1986. Feeling aggrieved, the claimants had sought references. Accordingly References were made to the District Court, Ahmedabad (R) where they were registered as Land Acquisition Case Nos.1630 to 1645 of 1987. On behalf of the claimants, witness Bhailalbhai Chunilal Patel was examined at Exh.36 whereas none was examined on behalf of the acquiring

authorities. On appreciation of evidence, the Reference Court by judgment and award dated March 5, 1994 awarded additional compensation to the claimants at the rate of Rs.50/- per sq.mt. It is well settled that previous award of the Reference Court relating to the lands of a village and which has attained finality can be treated as a good piece of evidence for the purpose of determining the market value of similar lands acquired subsequently from the same village. As observed earlier, the Additional Executive Engineer, who was examined on behalf of the appellants, has in term admitted in his cross examination that all the lands situated in village Nidhrad were similar in nature. Under the circumstances, this Court is of the opinion that the Reference Court did not commit any error in placing reliance on the previous award of the Reference Court relating to this very village for the purpose of determining market value of the lands acquired in the instant case. As is evident, previously the lands were acquired from this village pursuant to publication of Notification issued under Section 4(1) of the Act in the Official Gazette on December

20,1984 whereas the Notification under Section 4(1) of the Act was published in the Official Gazette on October 21, 1999 for acquiring the lands in the instant case. In view of time gap between the two notifications, this court is of the opinion that the Reference Court was justified in granting benefit of reasonable rise in price of the lands at the rate of 10% per annum to the claimants. However, there is no manner of doubt that the Reference Court while calculating the amount of compensation payable to the claimants on the basis of previous award of the Reference Court relating to the lands of this very village has committed error in holding that the claimants would be entitled to additional amount of compensation at the rate of Rs.123/- per sq.mt. and it is agreed between the learned counsels for the parties that on the basis of previous award produced at Exh.31, the claimants would be entitled to additional amount of compensation at the rate of Rs.118.40 Ps.per sq.mt.

10. The contention that the previous award of the Reference Court relating to the lands of village

Godhavi should have been relied upon for the purpose of determining the market value of the lands in the instant case cannot be accepted for the simple reason that the previous award of the Reference Court relating to the lands of this very village is available on the record of the case. Except the mistake which is committed by the Reference Court in calculating the additional amount of compensation which would be payable to the claimants, this Court finds that correct finding of facts have been recorded by the Reference Court to which settled propositions of law have been applied. The learned counsel for the appellants could not persuade this court to take a view different than the one taken by the Reference Court on appreciation of evidence. Under the circumstances, the prayer to restore the award of the Special Land Acquisition Officer cannot be accepted but the appeals will have to be allowed in part, as indicted above.

11. For the foregoing reasons all the appeals partly succeed. The judgment and award dated October 29, 2005 rendered by the learned 4th Additional Senior

Civil Judge, Ahmedabad (R) at Navrangpura in Land Acquisition Case Nos.130 to 145 of 2002 awarding compensation to the claimants in all at the rate of Rs.129.60 Ps. Per sq.mt. is hereby modified and it is held that in all the claimants would be entitled to compensation at the rate of Rs.125/- per sq.mt. for their acquired lands. The other benefits, which are granted to the claimants by the impugned award, are not interfered with at all and are hereby confirmed. The appeals are allowed to the extent indicated herein-above. There shall be no orders as to costs.

12. The Registry is directed to draw decree in terms of this judgment immediately.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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